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INJUNCTION AGAINST ROVING CHICKENS.

The Supreme Court of Iowa, admitting that by the common law an owner could be compelled by injunction not to allow his domestic animals to trespass on the lands of another, holds that this rule was never applicable to conditions in that state. In statutory changes of the Iowa rule, it is stated that chickens and the like still may run where they list and also lay. Possibly the last supplies the reason for lack of legislation and the egg away from home may be deemed of an animal *ferae naturae* and therefore the property of the owner of the soil. Vide *Kemple v. Schafer*, 143 N. W. 505, for a very learned and voluminous discussion on the rural rights of domestic fowls, the roosting place being their domicile.

CORPORATION TAX AS APPLIED TO RECEIVERSHIP.

The Supreme Court, speaking by Mr. Justice Pitney, rules that the net income earned by receivers of a corporation was not subject to the Federal corporation tax. That ruling is now academical, but why receivers are any more than corporate officers, *pro hac vice*, is to us difficult to discern. They struggle for success along the same lines as corporate officers; must obey the same regulations and charge only just rates, which are supposed to be fair earnings of capital over and above public taxes and assessments. The old franchised concern is there of which a court has taken charge just as it would take charge of the business of an individual or a partnership. *U. S. v. Whitridge*, 34 Supp. Ct. 24.

THE RIGHT OF STATE BANKS TO ENTER INTO THE FEDERAL RESERVE SYSTEM.

The question being agitated through the press as to the right of state banks to enter and, incidentally, to qualify for entrance, into the federal reserve system under the new currency law, has been pitched rather on the incidental, than on the main, thing for consideration.

In other words, it has been assumed in discussion, that it lies within the power of state banks to join in the plan which has been provided for a country-wide banking system under the Federal currency law, because the pervasiveness of such law creates a condition in the country of which a corporate entity organized under other law, and yet surrounded by that condition, in wise discretion may recognize as a matter of self-protection.

In this it seems to us the assumption has behind it indisputable basis, and state statutes by the express inhibitions they level against state banks strongly imply that this is true. We mean to say, generally, that state banks have ample power to go into the banking business, and this power under familiar rules of construction carries with it all the incidental powers necessary to its fair and reasonable exercise. The principle *expressio unius, exclusio alterius* here comes into play.

It might be thought that in the prosecution of its business a bank should have the right to invest its funds in outside property, its duty being to earn interest for its shareholders. This the law recognizes, but the field of investment is expressly limited, generally it being said it shall not acquire stock in other banks, except to protect itself in loans previously made. Therefore there is no sin in a bank owning stock in other banks but there is a sin in using its assets to make an investment, as such, in stock of other banks.

We think nothing else may be said as to the intent of statutes of this character, and it is to be conceded, that the limitation is

not to be frittered away by construction. But the question arises is it, in fact, a purchase of stock for a state bank to comply with a detail for admission to the federal reserve system, because the detail is purchase of stock, *eo nomine*?

It is to be noticed, that it is not bank stock as bank stock that is required to be purchased, but it is stock in a reserve institution required to be a bank. When it is acquired it does not stand as an investment, but it is the basis of qualification for membership in a banking system of the country.

Suppose, for example, the federal law had provided that banks entering this system should, like foreign insurance companies, deposit bonds with a federal regional bank, as a condition of doing business in the new system, would state banks be unable to comply? We think not. If they would not, may we not recur to Blackstone's illustration about the law forbidding the letting of blood in the street?

A state bank, in effect, makes the same kind of a deposit that the foreign insurance company does, except that it does not get the same kind of receipt the insurance company gets, and it cannot call for the specific thing it deposits, or the equivalent thereof. It is, however, no more an investment or purchase, as such, in one case than in the other.

N. C. C.

INJUNCTION BY PRIVATE PARTY AGAINST CONSPIRACY TO BAR THE USE AND SALE OF NON-UNION MADE GOODS.

There is, perhaps, no more interesting question in this day of alliances and organizations, for offense and defense, than the reach of the equity arm of the courts against their operation. There are pre-meditated plans, carefully concocted, underneath the surface of trade, which are opposed ever to the natural law of demand and supply, in a land otherwise of free and healthful competition. And while the lines of the poet,

"How few are all the ills we feel,
That laws may either help or heal,"

may be as true, generally, as when he penned them, it is not true that the machinations of conspiracy, in the world of commerce or of labor, are unable to multiply evidences of success, in the wan faces and starved eyes of victims in a land of plenty.

All of this is because, in artificial conditions, the intellectual energies of our civilization are arrayed, in great measure, against healthful enterprise and honest endeavor along legitimate lines of progress—the purpose to give for what one is paid a just equivalent.

We do not mean to ascribe to labor organizations sins along objectionable lines, but, on the contrary, we go as far as the most loyal to its cause, in our belief that organized labor means the necessary banding together of men with true aspirations for freedom, the right to demand a fair meed for toil.

When, however, its processes go beyond the defensive, in what may really seem to it but the furtherance of defensive tactics, its efforts are necessarily more in the open than plotting which has made conditions oppressive and pervasive. In other words, there are overt acts against our society which, false at bottom as it may be, the law must guard, because it cannot by *fiat* erect something in its place and then guard that. Having to recognize society as it stands, it must treat as unlawful any combination to overturn it.

The above reflections come from the reading of an opinion recently appearing in 50 N. Y. Law Journal, page 1497, as rendered in the Federal District Court for the Southern District of New York in the case of Paine Lumber Co. v. Neal, not yet reported.

In this case certain manufacturers and wholesalers of supplies entering into the construction of buildings and which were not the products of union labor, sought to enjoin certain labor organizations and their officers from the enforcement of regulations barring these supplies from buildings, in

the construction of which members of such organizations were or were to be employed. This barring is declared to be the result of an agreement making a combination in restraint of trade, but it is said: "It must be borne in mind that it is not sufficient to show that the agreement may create a monopoly, may be in restraint of trade or may be opposed to public policy. Agreements of that nature are invalid and unenforceable. The law takes them as it finds them and as it finds them leaves them; but they are not illegal in the sense of giving a right of action to third persons for injuries sustained."

Whether this proposition is well based or not we do not stop to inquire, but we do agree with New York Court of Appeals, from which the opinion quotes, that: "A civil action is maintainable by one who suffers injury as the result of a conspiracy forbidden by the criminal law to recover the damages which he has sustained at the hands of the parties to the combination." *Kellogg v. Sowerby*, 190 N. Y. 370. We think also it excessive refinement to distinguish in this way between the common law and statutes declaratory of the common law, merely because there is a misdemeanor for violation of the latter. Yet this distinction seems to have grown up in our jurisprudence.

But how does the court get around to it that injunction should not be granted? The opinion as it proceeds seems to admit that there were averments in the complaint that these plaintiffs had suffered injury in the loss of sales because of an agreement and operations thereunder forbidden both by the Sherman Act and the New York anti-trust law, and then says: "Of the many cases cited I find none where a general business situation in the case of employers or a general trade situation in the case of employees was corrected by injunction at the instance of private suitors. Ample remedy is provided at common law or by statute for recovery of money damage in actions by private suitors. The courts have time and again extended the equity arm to prevent

the commission or continuance of injury directed against particular persons and have protected employers against violence and sympathetic strikes, but where the purpose of an injunction is, as in the case at bar, to attempt to control a large body of men generally to work or not to work on a class of goods or in a kind of manufacture, the remedy of injunction is not to be granted in a litigation between private parties." The court's conclusion is that only the state as the guardian of the people in their general rights may undertake to take care of this situation.

The title to this editorial was taken to conform to the particular question involved, which presents as seen an exception to the general rule. For injury already inflicted and recurrent injury threatened by continuance of the course that has brought an injury, it may indeed be thought a quite universal rule, that injunction will lie, especially if the injury is of an irreparable nature.

Here, however, not because a court of equity cannot inquire into the complex causes of a general business or trade situation, but merely because it is general, a private suitor must rely on the general government, though from it he suffers special injury, merely because his products as a class are outlawed.

We say a court of equity is not reluctant to sift out the truth in complexity because it will do this at the instance of the *parens patriae*. But why this distinction? Why should not the participants in a corner in wheat or cotton be personally liable to any producer who seeks a natural market for their sale? And why, if he can trace loss in sale prices to the conspiracy against free competition, may not any one having wheat or cotton for market enjoin the forming of a pool to lower its price?

We know this suggests an elusive pursuit, where the sword of injunction would be cutting off heads while others would rise up in their places. But would not principle be back of such a remedy? Suppose a stock

exchange of a city were to attempt to control markets of products as labor unions attempt to control the marketing of labor, would not a court, if it believed that its attempt had definite effect on the lowering of the sale price of an owner's bale of cotton, as shown by proof, allow him to recover the difference in an action at law? And if so why not allow him an injunction as to cotton he still has to sell?

This case, however, is worse than that? The labor union keeps these plaintiffs, if what they say is true, from marketing their products at all. Is it an answer to say "I find no precedent for such an injunction in behalf of a private suitor?" There is an action at law by a private individual against a private individual, and irreparable injury is threatened. Is it not anomalous to say the horizon of equitable relief is narrower than that of law? The accepted belief is that it follows the law to all limits it may rightfully go.

NOTES OF IMPORTANT DECISIONS.

REWARDS — LIMITATION ON RULE AGAINST PEACE OFFICERS EARNING ADDITIONAL COMPENSATION IN PERFORMANCE OF REGULAR DUTIES.—The Supreme Judicial Court of Massachusetts, in *Hartley v. Inhabitants of Granville*, 102 N. E. 942, says that: "The general rule with reference to peace officers is well settled that a promise or reward for additional compensation to a public officer for services rendered in the performance of his duty cannot be enforced, either as being without consideration or contrary to public policy," yet holds that as "there was evidence in the case at bar that the plaintiff spent substantial time in the performance of purely detective work in the investigation and collection of evidence in consequence of the offer of reward outside the service rendered in serving the warrant and doing in other respects what the law required him to do by virtue of his office as constable. The case on its facts is rather close to the line, but it cannot be said that the finding of fact made by the judge was not warranted."

This is to say that while a peace officer ought to run down an offender in his county, yet this does not include his doing detective

work on a large scale, as this would be at the expense of the performance of his general duties. But, if this were the only reason, it would seem insufficient, because, if he were to accept a reward for doing detective work in the consumption of time, that belongs to the public, in his private interest, the temptation would be to make him shirk the performance of his general duties. Of course we do not mean to say that he might not attend, reasonably at least, to his private affairs. But when his private affairs so closely resemble and become intermingled, so to speak, in his public duties, caution and presumption ought to be against independent or extra compensation therefor. The court suggests that this case was "rather close to the line," but it gives small direction for identifying that line.

ACTION—THIRD PERSONS DAMAGED BY FAILURE OF CARRIER TO FURNISH CARS.

—There was much of novelty in suits by employees of a mining company for cessation of work and consequent loss of wages, because of a railroad's refusal to furnish cars to haul the output in coal of the company. *Illinois Cent. R. Co. v. Baker*, 159 S. W. 1169, decided by Kentucky Court of Appeals. This case was an injunction to obtain the prosecution of a number of such suits and judgment for defendants was reversed.

The court states the question thus: "Can an employee of a party maintain an action against a common carrier to recover damages that will compensate him for the time he has lost from his employment on account of the failure of the common carrier to perform its duty in furnishing cars to the party by whom he is employed? It is obvious that if an employee, under the circumstances stated can maintain an action, so could any person who has suffered injury by failure of the carrier to discharge a duty it owed a party who was unable on account of this failure, to comply with his contract or keep his engagement with the party seeking relief. Thus it will readily appear that if actions like this may be maintained, there is opened up an illimitable field of litigation." The opinion then goes into possible cases, by way of illustration. The court, recognizing the general rule, that violation of statutory duty may give right of action to one having no contract with the violator, argues that the violation here involved rests upon a contract relation and beyond that there is the principle cause proxima, et non remota, spectatur lex, and this relation is entered by notice to carrier to furnish the cars. Out of such statute raises a contract.

This may be good reasoning, but it seems to us wholly unnecessary. There is a common law duty by a carrier to accept freight offered for transportation, and statute providing for notice for cars is in favor of the carrier rather than the shipper. Without the statute the coal miner could offer his coal, tender the freight charges and demand its transportation. By the statute before he can make such demand he must apprise the carrier beforehand of his need of cars. Doing this the shipper places himself in position to assert his common law rights. For disregard of these it would hardly be pretended the carrier would be liable to any other party than a proposed shipper. That a penalty is attached to failure to furnish cars does not derogate from the statutory purpose above indicated. This liability to penalty is but a burden in the benefit arising out of the statute in favor of the carrier.

JUSTICE OF PEACE'S COURT.

Until quite recently in practically all the States of the Union the Justice of the Peace's Court was that which was nearest its people and was often called the People's Court. Recently, there has been established in Kansas a court which seems to be nearer, and the object and purposes seem to be, to settle all trivial matters, the limit in accounts here being \$5.00, without the formality of a law suit. In this court there are to be no attorneys, the justice or whatever name the person may be designated, makes a personal examination into the merits of the claim and renders judgment accordingly.

If he is paid a fee or receives a salary it comes from the State and not from the litigants. The object and purpose being that small claims may be settled without danger of being eaten up in courts. The measure is a commendable one and its outcome will be watched with interest by the members of the legal profession as well as those engaged in philanthropy in a general way. If successful it may become the People's Court and supplant the Court of the Justice Peace

in that popular title. In this country under the various statutory and constitutional provisions the Justice of the Peace's Court has lost many of the characteristics which originally gave to it its name. This name would indicate that it is a conservator of the peace—In this respect its power is limited.

The office of Justice of the Peace is said to be one of great antiquity. However, so far as English jurisprudence is concerned it has its origin in a statute of Edward III. Here "for the better keeping and maintenance of the peace" it was ordained "that in every county good men and lawful, which be no maintainers of evil or barretors in the country shall be assigned to keep the peace."

One writer says that if we are to judge from the large number of works published concerning the duties, etc., it is more ancient than the Bible.¹

While they were not known by the name of Justice of the Peace; yet, at common law there were certain conservators of the peace who were of two sorts. (1) Those who in respect of their offices had power to keep the peace, but were not simply called by the name of conservators of the peace, but by the name of such offices. (2) Those who were constituted for this purpose only, and were simply called by name of conservators or wardens of the peace.

From Blackstone² we learn that by reason of the statutes of 34 Ed. III, giving to these conservators of the peace the power of trying felonies, that they acquired the "more honourable appellation of justices."

It may be interesting here to note that in England the justice of the peace never had any civil jurisdiction.³

In this same connection we may call attention to the fact that in the United States their civil jurisdiction exceeds that of a criminal character.

That in criminal matters is it only in misdemeanors that the justice is permitted to

(1) Am. and Eng. Ency., 1st ed., p. 393.

(2) Book 1, p. 351.

(3) *People v. Mann*, 97 N. Y. 530.

pass upon the criminality of the charge. In all the graver offenses he is merely an examining magistrate as to the probability of the commission of a crime, and if he finds that a crime has probably been committed to require the person charged to appear in a higher court to answer for the same.

"The power, office and duty," says Blackstone,⁴ "of a justice of the peace, depend on his commission, and on the several statutes which have created objects of his jurisdiction. His commission first empowers him singly to conserve the peace; and thereby gives him all the power of the ancient conservators of the common law, in suppressing riots and affrays, in taking securities for the peace, and in apprehending and committing felons and other inferior criminals. It also empowers any two or more to hear and determine all felonies and other offenses: which is the ground of their jurisdiction at sessions. . . . And as to the powers given to one, two or more justices by statute which from time to time have heaped upon them such a variety of business, that few care to undertake, and fewer understand the office; they are such and of such great importance to the public that the country is greatly obliged to any magistrate that, without sinister views of his own, will engage in the troublesome service."

The latter part of the above quotation is applicable to many parts of our country at this time. There is no doubt but a good man in the office of Justice of the Peace is a very valuable public servant. If of the right spirit he settles many neighborhood difficulties, and by his good offices prevents many more.

But it is a matter within common knowledge that each year it seems to grow more difficult to prevail upon persons to hold the position, especially is this true in the country precincts.

There the remuneration is very small, and there seems to be a growing disposition against giving gratuitous public ser-

vice of any kind. And in the cities generally, the official being remunerated by fees, very often dependent upon a finding for the plaintiff, the tendency of the official is not to settle and prevent litigation, but often encourage it, and the good men are not aspirants for positions where such things have been and may be done.

Where the office was looked on with favor it was only given, not only to men of the best reputation and most worthy in the country, they were to be sufficient knights, esquires and gentlemen of the law, and later none were eligible who were not owners of realty of a clear yearly value of £100 above all incumbrances.⁵ It was also provided that no practicing attorney, solicitor or proctor shall be capable of acting as a justice of the peace.⁶

Whatever the office may have been in England it was brought to this country by the colonists. From the earliest colonial period it has existed in this country. By the code known as the "Dukes Laws" for the government of the colony of New York, promulgated in 1665, justices of the peace were commissioned for the towns in the province with the same power as in England.⁷ While the office itself was brought to this country by the colonists and in that way it may be said to, with us, have a common law origin, yet it has been so changed by statutory enactments and constitutional provisions that the position may be classed as a statutory or a constitutional one as the case may be. However, there may be instances when the nature of the court is to be considered, that there the decisions of the English courts are to be examined and due weight given them. "Custom and usage and the decisions of the higher courts have during all that time been giving shape and form to the law on this subject, as on all others, and though originating in the statute, the law is now to be sought not in those statutes alone but in the books of re-

(5) 1 Black., p. 353.

(6) *Id.*

(7) *People v. Mann*, 97 N. Y. 534.

(4) Book 1, p. 354.

ports and works of authority on such subjects."⁸

As a general rule, the office of Justice of the Peace is provided for by the various constitutions of the several states, but the powers and duties are defined by statute. The following states have constitutional provisions in regard to the office.⁹

In a number of states the Justice of the Peace is to be appointed by the governor—Delaware, Minneapolis, Maryland, Massachusetts, New Hampshire and South Carolina.

The office was a constitutional one in Ohio until the adoption of the amendment proposed by the constitutional convention in 1912. It now exists in that state by virtue of statutory enactment under a constitutional provision that permits the legislature to create such courts as it may think proper inferior to the Supreme, Circuit and Probate Courts.

In a number of states, by a constitutional provision, their jurisdiction is limited to a specified sum in civil matters.¹⁰

(8) State v. Eastman, 42 N. H. 268.

(9) Ala., Art. 6, Sec. 168; Ark., Art. 7, Sec. 38. Col., Art. 6, Sec. 11, 12; Col., Art. 14, Sec. 11; Conn., Art. 10; Del., Art. 4, Sec. 32; Fla., Art. 5, Sec. 21; Ga., Art. 6, Sec. 6, Par. 1; Ind., Art. 7, Sec. 14; Idaho, Art. 5, Sec. 22; Kan., Art. 3, Sec. 9; Ky., La., Art. 126; Mont. Art. 8, Sec. 20; Mo., Art. 6, Sec. 37; Mich., Art. 7, Sec. 15; Md., Art. 4, Sec. 42; Minn., Art. 6, Sec. 8; Miss., Art. 6; Sec. 171; Me., Art. 6, Sec. 5; Mass., Art. 3, part 2, ch. 3; Nev., Art. 6, Sec. 8; N. J., Art. 6, Sec. 7; N. Y., Art. 6, Sec. 17; N. Dak., Art. 4, Sec. 112; N. H., Art. 74, part 2; O., Art. 4, Sec. 9; Okla., Art. 7, Sec. 18; Pa., Art. 5, Sec. 11; R. I., Art. 10, Sec. 7; S. Car., Art. 5, Sec. 20; Tenn., Art. 6, Sec. 15; Tex., Art. 5; Sec. 18; Utah, Art. 8, Sec. 8; Vt., Art. 18, Sec. —; Wis., Art. 7, Sec. 15; Wyo., Art. 5, Sec. 22; W. Va., Art. 8, Sec. 27.

(10) Ark., Art. 7, Sec. 40; amount does not exceed \$100.00. Cannot hold where a lien on land is claimed, or title is involved. Ala., Art. 6, Sec. 168; amount not to exceed \$100.00, except in libel, slander, assault and battery and ejectment. Cal., Art. 6, Sec. 11; amount claimed does not exceed \$300.00 in action to enforce liens on personal property, etc. Colo., Art. 6, Sec. 25; amount does not exceed \$300.00, and where boundaries and title etc., are not called in question. Fla., Art. 5, Sec. 22; amount claimed does not exceed \$100.00. Ga., Art. 6, Sec. 7; amount claimed does not exceed \$100.00. Idaho, Art. 5, Sec. 22; amount claimed does not exceed \$300.00 and neither boundary nor title is called in question. La., Art. 126, amount claimed

In a number of states a limited criminal jurisdiction is provided for in their constitutions. This limitation is based either on the amount of the fine that may be imposed, the length of time of the imprisonment, or the degree of the crime.¹¹

A number of state constitutions merely provide that their powers and duties shall be regulated by law. Thus leaving to the legislature the duty of prescribing the jurisdiction to be exercised.¹²

does not exceed \$100.00. Mich., Art. 7, Sec. 16; amount does not exceed \$300.00, exclusive up to \$100. Minn., Art. 6, Sec. 8, amount does not exceed \$100, nor in any cause involving title to real estate. Miss., Art. 171, amount does not exceed \$200. Neb., Art. 6, Sec. 18, amount does not exceed \$200, nor where title to land is involved. Neb., Art. 6, Sec. 8, amount does not exceed \$300, nor where title to land is involved. N. Car., Art. 4, Sec. 27, in actions founded on contract not to exceed \$200 when title to real estate is not in controversy; other civil actions where amount does not exceed \$50. N. Dak., Art. 4, Sec. 112, where amount does not exceed \$200, and where there is no question involving title or boundaries to real estate. N. H., Art. 76, Par. 2, amount not to exceed \$100, right of appeal reserved in all cases. New Mex., Art. 6, Sec. 26. Okla., Art. 7, Sec. 18, not to exceed \$200. S. Car., Art. 5, Sec. 21, called magistrates, amount not to exceed \$300, and title not involved nor chancery case. S. Dak., Art. 5, Sec. 22, amount not to exceed \$100, and neither title nor boundary involved. Tex., Art. 5, Sec. 19, amount not to exceed \$200. W. Va., Art. 8, Sec. 28, amount not to exceed \$300. Wyo., Art. 5, Sec. 22, amount not to exceed \$200.

(11) Fla., Art. 5, Sec. 22, in all criminal cases except felonies, and may issue process for arrest of felonies and misdemeanors. Minn., Art. 6, Sec. 8, where the punishment does not exceed three months and the fine not over \$100. Miss., Art. 171, has concurrent jurisdiction with the circuit court in crimes where the punishment does not extend beyond imprisonment in county jail, and such exclusion as the legislature may confer in petty misdemeanors. Mont., Art. 8, Sec. 21, no jurisdiction in cases of felony, except an examining court. In others as the legislature may provide. N. Car., Art. 4, Sec. 27, all criminal matters arising in the county where the punishment cannot exceed a fine of \$50. Okla., Art. 7, Sec. 18, convenient jurisdiction with circuit court in all misdemeanors in which the punishment does not exceed a fine of \$200, or imprisonment in county jail not to exceed 30 days, or both. S. Car., Art. 5, Sec. 21, such jurisdiction as the legislature may provide, not to extend to cases where punishment exceeds a fine of \$100 or imprisonment for 30 days. Tex., Art. 5, Sec. 19, where the penalty of fine imposed by law may not be more than \$200.

(12) Colo., Art. 6, Sec. 25; Conn., Art. 5, Sec. 1; Del., Art. 4, Sec. 35; Kan., Art. 3, Sec. 9; R. I., Art. 10, Sec. 7; Ohio, Art. 4, Sec. 9; S. Dak.,

If nothing more was at hand the fact that so many states had in some manner recognized this court would be sufficient to show how firmly it is implanted in the jurisprudence of this country. Yet in some states, a feeling seems to prevail, that in cities at least, it is not fully meeting the demands of our modern civilization. This is notably true in Ohio, where its recognition was stricken from the constitution and in that state it has been supplanted in a number of cities by what is termed a municipal court.

As a general rule it may be said that justices of the peace, are judges in the legal sense of the term, having the right and power to decide upon the rights of others by authority of law.¹³

And so, too, it has been held to be included within the term "courts." So held within the meaning of the Illinois constitution relative to the administration of justice.¹⁴ However, when so considered, it does not apply to the official, but to the judicial power exercised.¹⁵ Likewise, it has been held to be included in the term "Magistrate" and "police magistrate,"¹⁷ and it has been held that "conservator of the peace" and "justice of the peace" are equivalent terms,¹⁸ and that the word "justice" is synonymous with "Justice of the Peace."¹⁹

But whether or not a justice of the peace's court has reached the dignity of a court of record is a mooted question. In *Cyc*²⁰ in giving a definition to the term justice of the peace it is said that "he is a judicial officer of an inferior rank, holding

a court not of record,"²¹ and on a succeeding page it is said: "In a number of states justices' courts are courts of record—but in other jurisdictions they are not."

Within the general definition of what constitutes a court of record it undoubtedly does not come within the term.

Bouvier, in his institutes, says: "In this country a court which does not possess common law jurisdiction and seal and has a clerk or prothonotary for the purpose of engrossing and keeping its proceedings would not be considered a court of record."²² This definition seems to be supported by the Supreme Court of the United States.²³ In Bouvier's Dict. it is defined: "To be one which has jurisdiction to fine or imprison or one having jurisdiction of civil cases above forty shillings and proceeding according to the course of common law."²⁴

If the statute or constitution of a state should indicate whether it should be considered a court of record or not, this would control.

Whether or not it be a court of record would generally not be a matter of importance except as to the effect of its orders and judgments to be collaterally impeached and the power of the justice to make a nunc pro tunc order or entry.

We think that as now conducted there is not much doubt but what within the ordinary meaning given to the term, a justice's court is a court of record—while it may not have a seal and a special clerk, yet all its proceedings are made a matter of record.

In an early Ohio case²⁵ the court holds: "A justice of the peace is not a court of record within the statute authorizing the courts of record to proceed by rule of court to enforce statutory awards."

In a later case²⁶ in the same report it was held that it was a court of record so that a judgment rendered by it could be sued up-

Art. 5, Sec. 22; Utah, Art. 8, Sec. 8; Wis., Art. 7, Sec. 15.

(13) *Scott v. Spiegel*, 67 Conn. 349; *People v. Wilson*, 15 Ill. 388.

(14) *Tissier v. Rhein*, 130 Ill. 110.

(15) *Waldo v. Wallace*, 12 Ind. 569.

(16) *People v. Splers*, 4 Utah 385, 10 Pac. R. 609; *Martin v. State*, 32 Ark. 124; *Childers v. State*, 30 Tex. App. 160; *Ex parte White*, 15 Nev. 146.

(17) *Hurtz v. State*, 22 Fla. 36.

(18) *Wenzler v. People*, 58 N. Y. 516.

(19) *Helms v. O'Bannon*, 26 Ga. 132; *Hoyle v. Mott*, 62 Vt. 255.

(20) Vol. 24, p. 402.

(21) Citing *Bloch L. Dict.*, p. 405.

(22) 3rd Bowr. Inst., Sec. 2,628.

(23) *Freeman on Judgments*, Sec. 123.

(24) *Title—Court of Record*.

(25) *Hubbell v. Baldwin Wright*, 86.

(26) *Adair v. Rogers, Wright* 428.

on. In another case²⁷ it was said, "that for certain purposes and to a certain extent the court of a justice of the peace is to be regarded as a court of record."

Here it was further held that a judgment rendered by a justice in a sister state, although not within the act of Congress for the authentication of records is a judicial proceeding, within the first section of Act 4 of the Constitution of the United States, and that a transcript of such judgment is to be regarded as a specialty under the statute of limitations.

Again in later case in the same state we find the court declaring the law to be: "The jurisdiction of a justice of the peace in this state is inferior and limited; to support a judgment of his court, the record must show that it had obtained jurisdiction over the person of the defendant."²⁸

In the opinion in this case it is said "it is otherwise as to courts of record of general jurisdiction."²⁹

When jurisdiction is shown by the record then the judgment of a justice of the peace is as impregnable against collateral attack as the judgment of any other court.³⁰

A justice's court will not be presumed to be a court of record, unless it is shown to be such by the law of the state, where the judgment is rendered.³¹

As a general rule only judges of courts of record have power to make *nunc pro tunc* entries, and therefore if justice's courts are not courts of record the justice would have no such power. However, as the basis for the power to put on a *nunc pro tunc* entry is solely for the purpose of preventing a failure of justice, there seems to be no good reason why the justice should not exercise this power. True there might sometimes, by reason of not having a clear understanding, on the part of the justice as

to what the facts were, be a miscarriage of justice and it would not be beyond the pale of supposition that sometimes the justice might, through means not clearly approvable, sanction an order of this kind that would not secure justice.

But these same objections are not without force as against the exercise of the power of a judge of a recognized court of record, to make a *nunc pro tunc* order.

As a rule, notwithstanding what may be said about the singular ways and peculiar methods sometimes exercised by the justice of the peace, as an official of the law, they are honest men.

When Wouter Van Twiller counted the pages in the account books of the contesting merchants in the action before him and finding them to be equal in weights and number, thereupon dismissed the case and assessed the costs to the constable, there is no doubt cast upon his honesty and integrity.

When something is actually done by a justice in the trial of a cause which has been omitted to have been made a matter of record; all ideas of justice point to the fact that the justice of the peace should correct or supply the omission.

And at least one court has fully recognized this when it held that a justice of the peace may correct a judgment rendered by his predecessor in office, by a *nunc pro tunc* order to make it conform to the truth.³²

"Cyc," however, states the general rule to be "except where authority is conferred on justices of the peace to grant new trials, the weight of authority is to the effect that they have no power to change or in any manner to interfere with, judgments which they have rendered."³³

This assumes that the judgment has been rendered, not that it has been made a matter of record—In a case within the writer's knowledge, under a law which required the justice to render his judgment within three days from the time of trial and the justice's

(27) *Stockwell v. Coleman*, 10 O. S. p. 40.

(28) *Robbins v. Clemens*, 41 O. S. 285.

(29) *id.* 286. See *Miller v. Meeker*, 54 Neb. 542.

(30) *McCurdy v. Baughmar*, 43 O. S. 81; 24 Cyc. 608 and authorities cited.

(31) *Mowry v. Cheesemen*, 72 Mass. 516; *Riggio v. Grahn*, 9 Ind. 212.

(32) *Gates v. Bennett*, 33 Ark. 475.

(33) 24 Cyc. 604.

record showed that it was not rendered until seven days after trial—the justice was allowed to correct his record by inserting that there was in fact a continuance of the case to a date, which brought the time, judgment was entered, within the time limit—This was changing the record to conform to the truth.

W. M. ROCKEL.

Springfield, Ohio.

ACTION—STATUTORY DUTY.

MOLIN v. WISCONSIN LAND & LUMBER CO.

(Supreme Court of Michigan. Nov. 3, 1913.)

143 N. W. 624.

Where a statute imposes a duty for the benefit and protection of individuals, the common law, when an individual is injured by a breach thereof, will supply a remedy though the statute gives none, and consequently, as Pub. Acts 1909, No. 37, requiring receptacles containing gasoline, etc., to be plainly marked, provides no remedy for persons injured by its breach, the remedy is under the common law.

OSTRANDER, J. The case made by the declaration is briefly stated. Defendant owned a small building used as a blacksmith shop. Plaintiff with others, including one David Larson, was employed by Alfred Paulson to load forest products upon cars in the vicinity of the shop. Defendant permitted Paulson's men to use the shop for warming and eating dinner and to make a fire in a stove in the shop. Defendant kept and maintained in the shop, in a can, a quantity of gasoline, or benzine, or naphtha. There are three counts in the declaration, varied by alleging in one that the can contained gasoline, in another that it contained benzine, and in the third that it contained naphtha. Going into the shop on March 3, 1911, the plaintiff and Larson proceeded to build a fire in the stove, in doing which Larson poured some of the fluid from the can into the stove. The fluid was ignited by coals of fire which were in the stove, there was an explosion, and plaintiff was injured. The duty of defendant is alleged to be to keep the said gasoline (or benzine, or naphtha) in a receptacle painted red and stenciled gasoline (or benzine, or naphtha), as required by Act 37 of the Public Acts

of 1909, and the breach of duty alleged is that the fluid was kept in a can not labeled and not painted red. It is averred that, while plaintiff was in the exercise of due care, Larson, as the result of the negligence of defendant, procured the can and poured some of the fluid in the stove; "the said plaintiff not then and there knowing the contents of the said can to be gasoline" (or naphtha, or benzine) but supposing it to be kerosene oil. To the declaration defendant demurred for the reasons: "(1) Because the declaration fails to allege any such state of facts or such active wrongdoing or wanton or gross negligence as make the defendant liable under the license or permission granted by it to plaintiff's employer, Alfred Paulson, permitting his employes, including plaintiff, to enter and use the stove in the blacksmith shop of the defendant for the purpose therein mentioned. (2) Because it appears from said declaration that, at the time the accident occurred resulting in the injury to the plaintiff, the premises were not being used in accordance with the permission granted to Alfred Paulson, the employer of the plaintiff. (3) Because it appears from the declaration that the plaintiff was guilty of contributory negligence as a matter of law. (4) Because it appears from the declaration that the plaintiff did not belong to the class of persons which Act No. 37 of the Public Acts of 1909 (the violation of which by the defendant is charged to be negligence) is intended to protect. (5) Because it does not appear from the declaration that the defendant belongs to the class of persons who are required by said act to keep gasoline, naphtha, or benzine in the receptacles mentioned in said act and marked as provided therein. (6) Because it does not appear that the defendant violated said Act No. 37 of the Public Acts of 1909. (7) Because the failure to label the can containing gasoline, naphtha, or benzine was not the approximate cause of the injury. (8) Because under the facts as stated in the declaration the defendant owed no duty to the plaintiff to label said can in accordance with said statute. (9) Because it does not appear from the facts as stated in the declaration that the defendant was guilty of any negligence." The demurrer was sustained and a judgment was entered that plaintiff take nothing by his suit and that defendant go thereof without day. It does not appear that any amendment of the declaration was or is desired.

[1, 2] The case cannot be disposed of on the second, third, fifth, or sixth grounds of demurrer. Fairly interpreted, the declaration charges defendant with a violation of the stat-

ute. The command of the statute is: "Every person purchasing gasoline, benzine or naphtha for use or sale at retail shall procure and keep the same only in barrels, casks, jugs, packages or cans painted and lettered as hereinbefore provided"—i. e., in red cans having the word gasoline, or benzine or naphtha, plainly lettered in English thereon. We must therefore consider the question which is raised by the other asserted grounds of demurrer.

The statute imposes a duty as a regulation of police, and it provides that, if the duty is neglected, a penalty, which may be a fine or imprisonment or both, may be imposed. It does not otherwise point out the consequences of its violation. The authorities recognize as a general rule that, where the duty imposed by a statute is manifestly intended for the protection and benefit of individuals, the common law, when an individual is injured by a breach of the duty, will supply a remedy if the statute gives none. See *Barfoot v. White Star Line*, 170 Mich. 349, 136 N. W. 437, and authorities cited in the opinion. The duty imposed by this statute is in fact calculated to protect, and we have no doubt was intended to protect, individuals.

[3] It is said by appellant that the statute is intended for the protection of the public; that plaintiff "was rightfully upon the premises and, being a part of the whole public, was entitled to the protection of the statute." But a duty owing to everybody can never become the foundation of private action at law until some individual is placed in a position which gives him particular occasion to insist upon its performance; it then becomes a duty to him personally. Illustrating by the facts before us, whether defendant obeyed the statute was a matter of no personal consequence to plaintiff so long as he remained away from defendant's blacksmith shop or, being rightfully in the shop, so long as he did not use defendant's property to build a fire. Assuming that defendant violated the statute and that keeping the gasoline (or benzine, or naphtha) as it was kept was negligence per se, was plaintiff a person having the right to insist that the duty be performed—to insist that defendant owed him any duty? In argument appellant seems to make the answer to this question depend somewhat upon what Larson did. Larson, it is averred, found the can and poured some of its contents into the stove; plaintiff supposing that what the can contained was kerosene oil. The enterprise of building a fire was a joint one, undertaken for the benefit of both Larson and the plaintiff, and involved, on the part of both, the use of defendant's oil.

It is not a case where the can and its contents came rightfully into the hands of Larson for use. Both were on the premises of defendant by permission. Neither had been invited to use them, and neither of them had any business to transact with defendant there. The relation of each to the premises and to defendant was that of a licensee. Did defendant owe them the duty to see that his gasoline (or benzine, or naphtha) was kept in a red can? We think the answer must be "no" unless in giving permission to build a fire, defendant ought to have considered that the men were likely to use his kerosene oil for that purpose and might suppose the can in question contained kerosene oil. The plaintiff has not averred a custom or practice in the locality or generally of starting fires in stoves with oil, by reason of which defendant ought reasonably to have anticipated that his licensees would search for his oil and use it to start a fire. We know of no general custom or practice to make such use of kerosene oil.

We conclude that the declaration alleges no duty owed by defendant to the plaintiff, and therefore affirm the judgment.

NOTE.—The Statutory Purpose of Protection as Ground of Right of Action for its Violation.—It has sometimes been said, generally, that the mere violation of a statute causing injury to another gives him a right of action for damages against the violator. But this language seems too broad. The instant case rather is fore correct in saying that where there is a statutory duty imposed for protection of individuals and injury flows from its breach, a right of action arises.

The Supreme Judicial Court of Massachusetts in discussing a statute prohibiting employment in factories of children under fourteen years of age, said: "The statute has to do with the protection of childhood. It pertains to a subject of universal intent fundamentally vital in its broader bearings to the future of mankind. These considerations require the inference that the remedy intended by the legislature against the delinquent employer was not confined to the criminal one. The right of civil action in addition may well have been regarded as a more efficacious means of compelling observance of the law. Therefore, while the public purposes of this act are important, any member of the public so situated with reference to its subject matter as to suffer special damage by its infraction has a right of action against the violator of the statute." *Berdos v. Tremont & Suffolk Mills*, 209 Mass. 489, 493, 95 N. E. 876.

We will suppose in an action under this statute, a suit brought by another than a child, that one not being his parent, upon the theory that the incompetency of the child as a fellow servant had brought about injury. We imagine according to the reasoning of the court, that the statute would cut no figure in such a case, because it was not designed for a third person's protection.

Therefore, mere violation of a statute to which criminal punishment does not in itself give a third person injured thereby a right of action against the violator—the statute not being intended for his protection.

This theory of violation of statute or ordinance having its only consequence in the prescribed penalty is illustrated in a case referred to in the case just cited, viz: *Dahlin v. Walsh*, 192 Mass. 163, 77 N. E. 830. The plaintiff sued the tenant of abutting property for damages from injury in a fall caused by accumulation of snow and ice on the sidewalk. In holding the tenant not liable the court said: "He owed no duty to the plaintiff to keep the sidewalk clear of ice and snow coming thereon from natural causes . . . whether or not any public duty was imposed upon him by the ordinances of the city." This court has held it to be well settled that a person carrying on a business contrary to the provisions of a statute is liable to any person injured thereby. *Moeckel v. Cross & Co.*, 190 Mass. 280, 76 N. E. 447. But that was said in a nuisance case and this general language would seem limited by the two cases above cited which are later.

In *Baxter v. Coughlin*, 70 Minn. 1, N. W., there is discussed a statute prohibiting officers, etc., of an insolvent bank receiving deposits, knowing the bank is insolvent, making the doing so a criminal offense. This case was an action by a depositor against directors for damages. Upon demurrer the petition was sustained, the court saying: "The purpose of this statute is to protect depositors in a bank by punishing its officers for receiving deposits when the bank is insolvent. . . . This case falls within the rule that where a statute for the benefit and protection of individuals prohibits a person from doing an act, or imposes on him a duty, if he disobeys the prohibition or neglects to perform the duty, he is liable to those for whose protection the statute was enacted for any damages resulting proximately from such disobedience or neglect."

In a fire escape case in New York, it was urged by defendant that the sole remedy under the statute was the public remedy, which was in enforcement of the penalties provided. The court said: "The requirement of fire escapes was for the direct and special benefit of the operatives of such factories, and intended for their protection, and the rule applies that when a statute commands or prohibits a thing for the benefit of a person he shall have a remedy upon the same statute for the thing enacted for his advantage for a wrong done him contrary to its terms." *Pauley v. Steam Gauge & L. Co.*, 131 N. Y. 90.

Similarly it was spoken in *Rose v. King*, 49 Oh. St. 213, in a fire escape case, the contention being made that a tenant in the second story was not among those for whose protection the statute was designed, no two-story building being required to have fire escapes. The court said: "This proposition would have force if the number of people likely to need means of escape in a building of three or more stories would not be greater than in a two-story building." This shows that the court will proceed upon slender basis to ascertain that a statute may be intended for benefit of individuals in addition to enforcement of public policy, but cases might be multiplied with expressions such as we have instanced, carrying

the conclusion not to be doubted, that something is needed for a third person to sue for injury arising out of violation of a statute other than its violation. In addition to its public purpose there must be in the purpose of the statute the protection of individuals, either generally, or those whose situation must be thought to have been in the legislative intent.

ITEMS OF PROFESSIONAL INTEREST.

BAR ASSOCIATION MEETINGS — WHEN AND WHERE TO BE HELD.

FLORIDA—Tallahassee, latter part of February.

ILLINOIS—Chicago, date not fixed.

IOWA—Burlington, June 25 and 26, 1914.

KANSAS—Topeka, January 27 and 28, 1914.

MISSISSIPPI—Vicksburg, May 5, 1914.

NEW YORK—New York City, January 30 and 31, 1914.

SOUTH CAROLINA—Columbia, January 15 and 16, 1914.

SOUTH DAKOTA—Sioux Falls, January 14 and 15, 1914.

MEETING OF SOUTH CAROLINA LAWYERS.

The next meeting of the South Carolina Bar Association will be held at Columbia, South Carolina, January 15 and 16, 1914. Reports will be made by the standing committee as usual, and the annual address will be made by Prof. Roscoe Pound of Harvard University.

PROGRAM FOR MEETING OF SOUTH DAKOTA BAR ASSOCIATION.

The next meeting of the South Dakota Bar Association will be held in Sioux Falls, on Wednesday and Thursday, January 14 and 15, next.

The president's address will be delivered by the present president of the Association, Judge James H. McCoy of the Supreme Court of the State, of Aberdeen, South Dakota.

The annual address before the Association will be delivered by Dean William R. Vance of the Law School of the University of Minnesota of Minneapolis upon the subject, "Some Modern Lessons from an Ancient Court." There will be at least five other papers on the program, but the association has not been definitely advised by the speakers of the topics.

BOOK REVIEW.

MCQUILLIN MUNICIPAL CORPORATIONS, VOL. VI.

This great work is concluded with volume VI, and the author, Judge Eugene McQuillin, of St. Louis Circuit Court, has a monument to his name that will long endure.

In text notes and citations of authority the six volumes take up 5776 pages and the table of cases and index run the paging to 6425. A world of work, pains-taking and devotion to an ideal are here exemplified.

For the general character and thoroughness of the work we could only repeat our commendations in former reviews, 74 Cent. L. J. 108; 71 id. 195 and 77 id. 237.

These volumes are usable in size, handsome and substantial in appearance, all that could be wished for in readable type and issuing from Callagan & Company, Chicago, the concluding volume being of 1913.

KELLY'S CRIMINAL LAW AND PRACTICE. THIRD ED.

This is a revision and enlargement of Judge Kelly's second edition of Criminal Law, and Practice, a work of wide-spread use and recognized authority in Missouri, by Mr. Jay M. Lee, of the Kansas City Bar. Authority is brought down quite closely to date, the latest case upon which our eye has fallen being 245 Mo. 459, 150 S. W. 1038, here being, as stated in preface, cases in 246 Mo.

This work is so very familiar to Missouri practitioners that it has been deemed advisable to preserve old section numbers and adding other sections under an old number by adding letters thereto.

The work needs no praise, and to say it corresponds to latest revision, and includes in citation, the National Reporter System, L. R. A. and Trinity System, is all of what information may be given.

The volume is attractive from the printer's standpoint, with its binding of law buckram and issues from the Vernon Law Book Company, Kansas City, Mo., 1913.

KELLEY'S JUSTICE TREATISE, 5TH ED.

This well known book in Missouri practice of law, its first edition beginning in 1869 and continuing on down as new versions of the statutes of that state and new decisions thereon, demanded new editions, appears in fifth edition to conform to the revision of 1909.

The plan so popular and so well understood by Missouri attorneys and justices could not be changed but for weighty reasons. It only needed to be kept abreast of statutory changes, necessitating, in some instances changes in forms and of new decision interpreting these statutes, and this work has been done very thoroughly by Mr. W. W. Herron, of the St. Louis Bar.

Much advance has been made in the printers' and book binders' art since the fourth edition appeared in 1901, and all these are secured in the fifth edition, coming from the well-known lawbook house of Vernon Law Book Company, Kansas City, Mo., 1913.

HUMOR OF THE LAW.

"You say the defendant made ardent love to you?"

"Yes, your honor."

"Did you know that he had a wife living?"

"No, your honor; he gave me distinctly to understand that she was not."

"He testified that he told you she was living."

"He led me to believe the exact opposite, your honor."

"What were his words, to the best of your recollection?"

"He told me his wife was an angel."

A colored woman went to a magistrate the other day to complain of the conduct of her husband, who, she said, was a low-down, worthless, trifling fellow. After listening to the long recital of the delinquencies of her neglectful spouse and her efforts to correct them, the magistrate said:

"Have you ever tried heaping coals of fire upon his head?"

"No," was the reply, "but I done tried hot water."

In a town of upper New York they tell of a certain Deacon Potter, a man of great eccentricity but high moral character. This deacon would tell the truth and shame the devil. On one occasion a friend was engaged in a lawsuit in regard to some land a few miles from Utica. He held that land at a high price. During the trial he called the deacon as a witness, to prove how valuable the land was. The deacon was sworn and asked if he knew the land.

"I know every foot of it," he said.

"Very good. What do you think of it?"

The deacon paused for a moment as if to make sure that he would return an appropriately emphatic reply, and then said:

"If I had as many dollars as my yoke of oxen could draw on a sled on glaze ice I would not give a dollar an acre for it."—Green Bag.

Pat was brought before Police Judge George W. Stocker, in the Spokane Police Court, charged with drunkenness. After the testimony of the officer making the arrest, Judge Stocker asked: "Well, Pat, what have you to say this time?"

Evidently this was not Pat's first appearance before the judge.

Says Pat, with all the accents of a native son of Ireland: "Yer Honor, I've been workin' in the saw mill up North and just came to yer city last Saturday, and I've been drinkin' some, but, yer Honor, won't ye please exercise yer keen sense of justice and let me go? I'll leave town immediately, if yer Honor will just exercise yer keen sense of justice and discharge me this time. Please, yer Honor, won't ye exercise yer keen sense of justice and give me a chance to get out of town?"

His Honor, apparently much impressed with Pat's pleading and frank open countenance, said to Pat: "Pat, I will give you a sentence of five days in jail and suspend it on condition that you leave town this afternoon."

Pat very politely thanked his Honor for exercising "his keen sense of justice" and with a bow to the court and the bailiff, Pat left the courtroom with a broad smile on his face, and much to the amusement of those present.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

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1. **Associations—Action Against.**—In the absence of an enabling statute, a voluntary association has no legal existence and cannot be sued by its association name, and suits must be brought against the persons composing it individually.—*Kimball v. Lower Columbia Fire Relief Ass'n of Oregon, Ore.*, 135 Pac. 877.

2. **Attachment—Statutory Construction.**—Owing to the harshness of the remedy by attachment, it should be construed, in accordance with the general rule applicable to statutes in derogation of the common law, strictly in favor of those against whom it is invoked.—*Keldershouse v. McGarry*, 143 N. Y. Supp. 741.

3. **Attorney and Client—Cessation of Employment.**—The death of a party terminated the authority of his attorney, so that the attorney could not be served with notice of appeal, and the Supreme Court would have no jurisdiction of an appeal taken upon notice of appeal served upon such attorney.—*Oregon Auto-Despatch v. Caldwell, Ore.*, 135 Pac. 880.

4. **Attorney and Client—Freedom from Suit.**—Where a nonresident plaintiff, in an action pending in the United States court, employed an attorney residing in another state, such attorney, while attending the trial of such action, was privileged from being sued in such court.—*Read v. Neff, U. S. D. C.*, 207 Fed. 890.

5. **Bankruptcy—Discharge.**—Under Bankr. Act, requiring the bankrupt to schedule the property that "he owns," and section 70a (4), vesting in the trustee property fraudulently conveyed, the bankrupt's omission to schedule property alleged to have been fraudulently transferred more than four months prior to the filing of the petition will not bar a discharge.—*In re Hennebray, U. S. D. C.*, 207 Fed. 882.

6. **Practice—Bankruptcy Act, § 67f,** providing that attachments and other liens obtained within four months prior to the filing of a petition in bankruptcy shall be void, and the property released and pass to the trustee, unless the court shall on due notice order the lien

to be preserved for the benefit of the estate, is merely carrying out the general purposes of the bankruptcy act to secure to creditors the bankrupt's entire property.—*Corey v. Blackwell Lumber Co., Idaho*, 135 Pac. 742.

7. **Banks and Banking—Action.**—A bank is not liable to a wholesale house, to whose salesman checks were given by a customer, which were wrongfully indorsed and cashed by him at the bank, for loss of the customer's business, due to a controversy with the customer, who claimed that the checks satisfied his indebtedness.—*George Schechter & Co. v. Farmers' Nat. Bank, Ky.*, 159 S. W. 1140.

8. **Bills and Notes—Duress.**—Where defendants represented to plaintiff that there was a shortage in his accounts, and that, unless he made it good, he would be sent to prison, and plaintiff executed a note that night, and paid it the next day, the settlement of an attachment suit against his property was not a consideration, where he only learned of it by accident, and it was not considered between the parties.—*Nelson v. Leszczynski-Clark Co., Mich.*, 143 N. W. 606.

9. **Bills and Notes—Good Faith.**—The fact that an indorsee of a note took it at one-half of its face value, or that the transfer took place in a foreign country, does not indicate that the transaction was not in good faith.—*Leih-und-Sparkassa Aadorf v. Pfizer*, 143 N. Y. Supp. 744.

10. **Negotiability.**—Provision in a mortgage that the mortgagor would pay the taxes on the mortgage on a certain contingency did not render the note for which it was security nonnegotiable for uncertainty in the amount payable, since it did not entitle the mortgagee to recover such taxes as a part of the indebtedness, but only made the mortgage a lien therefor.—*Des Moines Savings Bank v. Arthur, Iowa*, 143 N. W. 556.

11. **Pleading.**—An allegation in a complaint in an action on a note that the note before its maturity lawfully came into possession of plaintiff for value is not equivalent to an allegation that plaintiff was a holder in due course.—*Laing v. Hudgens*, 143 N. Y. Supp. 763.

12. **Brokers—Contract in Writing.**—Since the original authority to procure a purchaser for land on commission must have been in writing, a ratification of an oral modification of such written agreement must also be evidenced by such writing.—*Slotboom v. Simpson Lumber Co., Ore.*, 135 Pac. 889.

13. **Middleman.**—Till terms are agreed on between the principals, a broker is merely a messenger between the parties, and when a trade is made he has authority only to write out and sign the bought and sold notes, stating the terms agreed on, to satisfy the statute of frauds, and has no authority to sign a written contract, as distinguished from a memorandum, where the trade is by word of mouth.—*Hobart v. Lubarsky, Mass.*, 102 N. E. 936.

14. **Carriers of Goods—Limitation of Liability.**—A reduction in the freight charges is a sufficient consideration for an agreement limiting the carrier's liability to a certain valuation of the interstate shipment where the shipper had an opportunity to ship at a full valuation.—*Metz v. Chicago, R. I. & P. Ry. Co., Kan.*, 135 Pac. 667.

15. **Chattel Mortgages**—Private Sale.—Where the holder of a first mortgage on cattle authorized the mortgagor to sell same, and he sold them at private sale, receiving an amount sufficient to satisfy the first mortgage and also a second recorded mortgage, but failed to pay the second mortgage, the purchaser was liable in an action by the second mortgagee for a sufficient number of the cattle to satisfy the second mortgage.—*Vale v. Stubblefield*, Okla., 135 Pac. 933.

16. **Commerce**—Employers' Liability Act.—Where a freight train conductor's run over an interstate carrier's road was between two points within the state, and his trains were almost wholly composed of interstate shipments, and on the day of his injury from a collision he was on the return trip after having taken an interstate train over his route, he was engaged in interstate commerce, within the federal Employers' Act.—*Peery v. Illinois Cent. R. Co.*, Minn., 143 N. W. 724.

17. **Common Carriers**—Action.—Employees of a coal company are not entitled to maintain an action against a carrier for loss of employment caused by its failure to furnish cars to the company, by which they were employed as required by Ky. St. § 783.—*Illinois Cent. R. Co. v. Baker*, Ky., 159 S. W. 1169.

18. **Criminal Law**—Jurisdiction.—The circuit court of a county bounded by the St. Francis river, where it forms part of the boundary between Missouri and Arkansas, has jurisdiction of a prosecution for an offense committed on the Missouri side of the channel under the Enabling Acts of Missouri and Arkansas which granted concurrent jurisdiction over boundary rivers to each state and the statutes of Missouri and Arkansas ceding such jurisdiction to each other.—*Brown v. State*, Ark., 159 S. W. 1132.

19. **Damages**—Death Without Eyewitnesses.—Where a person is killed in a casualty to which there are no eyewitnesses, due care on his part will be presumed.—*Wisniewski v. Detroit*, G. H. & M. Ry. Co., Mich., 143 N. W. 613.

20. **Deeds**—Equitable Interest.—While a transfer of land made on the margin of the record of the deed to the assignor would not vest the legal title in the assignee as against the assignor's subsequent creditors, the transfer conveyed to the assignee an equitable interest to the amount of notes paid by him, which were executed by the transferrer and were a lien on the land, and the transferee could convey such interest.—*Newsom v. Newsom's Trustee*, Ky., 159 S. W. 1175.

21. —Petition Back.—Where a father purchased land for his son, taking a deed in the son's name, which he retained until his death, assuming that the title did not vest in the son at the date of the deed, when he accepted it after his father's death, the title thereby perfected related back to the delivery to the father.—*Stone v. New England Box Co.*, Mass., 102 N. E. 949.

22. —Restraint of Trade.—A condition in a deed that at all future times the saloon which should be maintained on the premises should sell beer manufactured by a certain brewing company was void as an unlawful restraint of trade.—*Ruhland v. King*, Wis., 143 N. W. 681.

22. **Divorce**—Condonation.—Husband's delay for five years in suing for divorce held to raise a fair inference that he had condoned or excused the act complained of.—*Griffin v. Griffin*, Mich., 143 N. W. 603.

23. **Eminent Domain**—Estoppel.—An owner of land, who knowingly permits a corporation, possessing the power of eminent domain, to use or damage his property, may be limited to his remedy for damages.—*Hall v. Crawford Co.*, Neb., 143 N. W. 741.

24. —Rightful Exercise.—The power of eminent domain can only be exercised for the needs of the party to whom the power has been given, and not for the benefit of another.—*City of Spokane v. Spokane & I. E. R. Co.*, Wash., 135 Pac. 636.

25. **Equity**—Laches.—A person is guilty of laches in equity only when his conduct, negligence, or delay have induced another to do something, or abstain from doing something, whereby the latter would be injured if the former were allowed to enforce his rights, and the doctrine does not protect the fraudulent.—*Taber v. Bailey*, Cal., 135 Pac. 975.

26. —Multiplicity of Suits.—The fact that a number of persons have different demands against the same defendant of a like character, arising out of the same transaction, is not sufficient ground, under ordinary circumstances, for a court of equity to deny them the right to select the court in which such actions shall be prosecuted for the purpose of preventing a multiplicity of suits.—*Illinois Cent. R. Co. v. Baker*, Ky., 159 S. W. 1169.

27. **Estoppel**—Distinguished from Waiver.—A "waiver" is a voluntary relinquishment of a known right, while "estoppel" is based on some misleading conduct or language of one person which, being relied on, operates to the prejudice of another.—*Dahrooge v. Rochester-German Ins. Co. of Rochester*, N. Y., Mich., 143 N. W. 608.

28. **Evidence**—Latent Ambiguity.—Parol evidence of the circumstances under which a deed was executed is admissible, where its terms are ambiguous.—*White v. Shippee*, Mass., 102 N. E. 948.

29. —Presumption and Inference.—A "presumption" is a rule which the law makes upon a given state of facts. An "inference" is a conclusion which, by means of data founded upon common experience, natural reason draws from facts which are proven.—*Ensel v. Lumber Ins. Co. of New York*, Ohio, 102 N. E. 955.

30. —Referendum.—It is the duty of the Secretary of State in the first instance, in his official capacity, to determine by an inspection of a referendum petition whether the signatures are genuine and regularly authenticated, and, it being the presumption that he has performed his duty properly, his conclusion will not be interfered with on a mere inspection of the petition.—*State v. Olcott*, Ore., 135 Pac. 902.

31. **Executors and Administrators**—Gratuitous Services.—Where the relationship of the parties raised the presumption that they lived together and performed services as a matter of mutual convenience, the law will not imply a promise to pay for such services on presentation of claim against estate.—*Turner v. Young's Ex'r.*, Ky., 159 S. W. 1165.

32. —Settlements.—Where a person has contracted with an executor who refuses to acknowledge and discharge his obligation, he may be sued personally on his contract, and if compelled to pay may include the amount in his current account.—*Garver v. Thoman, Ariz.*, 135 Pac. 724.

33. **Exemptions**—Set-Off and Counterclaim.—In view of the liberal construction given exemption laws, a debtor's right to exemptions cannot be defeated by a set-off or counterclaim.—*Grant v. Phoenix-Jellico Coal Co., Ky.*, 159 S. W. 1161.

34. **Explosives**—Action.—Inasmuch as Pub. Acts 1909, No. 37, requiring receptacles containing gasoline, etc., to be plainly marked, provides no remedy for persons injured by its breach, the common law gives one.—*Mohlin v. Wisconsin Land & Lumber Co., Mich.*, 143 N. W. 624.

35. **Fraud**—Misrepresentations.—While ordinarily misrepresentations as to value on a sale of goods are not the basis of an action for fraud, such action may be maintained where they are intentionally made to a person ignorant of the value with no opportunity to inspect.—*Face v. Hall, Mich.*, 143 N. W. 622.

36. —Proximate Cause.—A person is responsible for those results of his fraud which were presumptively within his contemplation at the time the fraud was committed, and the person injured may recover for any injury which is the direct consequence thereof.—*Walsh v. Paine, Minn.*, 143 N. W. 718.

37. **Homicide**—Dying Declarations.—Whether the preliminary proof is sufficient to justify the admission of an alleged dying declaration is for the court.—*Harrrs v. People, Colo.*, 135 Pac. 785.

38. **Husband and Wife**—Maintenance.—In an action for separate maintenance, where the wife objected to being compelled to live with her husband's parents with whom she could not agree, the court might properly enter a decree requiring the husband to furnish her a home apart from that of his parents under a penalty of finding him guilty of desertion upon failure and awarding separate maintenance as an incident to such finding.—*Hirschl v. Hirschl, Iowa*, 143 N. W. 538.

39. **Indemnity**—Loss.—Where defendants contracted generally to indemnify plaintiff surety company against loss on bonds executed for defendant W., they were liable for a loss paid by plaintiff in good faith, notwithstanding plaintiff might have escaped liability by relying on a contract limitation on its bond.—*Fidelity & Deposit Co. of Maryland v. Hibbler, Mich.*, 143 N. W. 604.

40. —Remedy Over.—A person constructing a sign over a sidewalk in such a position as to strike the head of a pedestrian is liable to the city for damages paid by it to the person injured.—*Baillie v. City of Wallace, Idaho*, 135 Pac. 850.

41. **Injunction**—Domestic Animals.—A permanent injunction will be issued to restrain trespass upon the lands of another.—*Kimple v. owners from allowing domestic animals to Schafer, Iowa*, 143 N. W. 505.

42. **Insurance**—Delivery of Policy.—Where plaintiff arranged with an insurance agent to reinsure on the expiration or cancellation of

policies, a delivery of a new policy, obtained through another agency on cancellation of an existing policy, to such agent constituted a delivery to plaintiff.—*Warren v. Franklin Fire Ins. Co., Iowa*, 143 N. W. 554.

43. —Reinsurance.—A new fire insurance policy did not, as a matter of law fail to take the place of a policy written in another company upon delivery to insured by the underwriters and acceptance by the insured, though four days yet remained before the old policy could be canceled except by consent.—*Ensel v. Lumber Ins. Co. of New York, Ohio*, 102 N. E. 955.

44. —Warranty.—A warranty that insured was in good health held limited to his knowledge and belief, and therefore a statement that he had never had pleurisy, pneumonia, or heart disease was not falsified by the fact that he died from a blood clot in the heart, and a post mortem indicated pleurisy, without proof of his knowledge that he had suffered from such disease.—*Lakka v. Modern Brotherhood of America, Iowa*, 143 N. W. 513.

45. **Judgment**—Antiquity.—Where the recitals of a judgment are doubtful, the court may examine the whole record, and if the language admits of two constructions, adopt that one which is consonant with the facts and law of the case.—*Watson v. Lawson, Cal.*, 135 Pac. 961.

46. —Fraud.—Where it is claimed that judgment has been rendered on certain notes pursuant to a power of attorney contained therein as a result of the holder's fraud, the maker may obtain relief by suit to set aside the judgment and cancel the notes.—*Pierce v. Hamilton, Colo.*, 135 Pac. 796.

47. **Landlord and Tenant**—Holding Over.—Where a landlord permitted a tenant to hold over under a lease giving the landlord an option to extend the term for one year, this constituted an exercise of his option by the landlord, and extended the lease for one year.—*Lowry Realty Co. v. Wiles, Minn.*, 143 N. W. 738.

48. —Surrender.—A tenant could not refuse to surrender the possession of the leased premises at the expiration of his term to a subsequent lessee on the ground that such subsequent lessee leased the premises in order to prevent competition and secure a monopoly of the livery business in that city.—*Mattingly's Ex'r. v. Brents, Ky.*, 159 S. W. 1157.

49. —Tenancy at Will.—Continued possession by a lessee from a life tenant after the termination of the life estate, in the absence of anything to the contrary, is a tenancy at will.—*Sanders v. Sutlive Bros. & Co., Iowa*, 143 N. W. 492.

50. **Larceny**—Accessory.—Accused was merely an accessory before the fact, and could not be convicted of larceny where he was not present aiding and assisting in stealing a particular cow, but merely encouraged another to steal cattle generally and sell them to accused.—*Hughey v. State, Ark.*, 159 S. W. 1129.

51. **Libel and Slander**—Good Faith.—Defendant's good faith in making the charge is no defense to an action for slander for calling plaintiff a thief.—*Brandt v. Story, Iowa*, 143 N. W. 545.

52. —**Innuendo.**—An innuendo is proper only when the words of the alleged libel are equivocal and admit of several meanings when plaintiff by the innuendo may fix the meaning he thinks they ought to bear.—*Snyder v. Tribune Co., Iowa, 143 N. W. 519.*

53. —**Libel per se.**—A defamatory written statement imputing to a contractor dishonesty or fraud in his business is libelous.—*Robinson v. Coulter, Mass., 102 N. E. 938.*

54. —**Mitigation of Damages.**—Ordinarily the source of information out of which a libel grows and the good faith of the author are immaterial unless the article shows that it is based on information of others; but if express malice is charged, it is admissible to prove good faith and the sources of information in mitigation of damages.—*Snyder v. Tribune Co., Iowa, 143 N. W. 519.*

55. —**Privilege.**—Where an alleged libelous article concerning plaintiff's conduct as a lawyer with reference to certain court proceedings was not a fair, true report thereof but contained much matter which, if false, would be libelous, it was not privileged.—*Ingalls v. Morrissey, Wis., 143 N. W. 681.*

56. —**Punitive Damages.**—Punitive damages should be assessed where slanderous words are spoken, without belief in their truth, for the purpose of injuring another's good name.—*Brandt v. Story, Iowa, 143 N. W. 545.*

57. —**Limitation of Actions.**—Demand and Refusal.—Where one held corporate stock under an express continuing trust for two others and exchanged it for stock in another company, limitations could not be invoked against the right of the beneficiaries until after they had made a demand for the stock received in exchange and the demand was refused by the trustee.—*Taber v. Bailey, Cal., 135 Pac. 975.*

58. —**Master and Servant.**—Competent Servants.—An employer is required to use reasonable care and diligence in the selection of competent servants; but he is not an insurer.—*Olson v. Silverton Lumber Co., Ore., 135 Pac. 752.*

59. —**Fellow Servant.**—Where a railroad employe was killed in unloading logs from a car, due to his working partner throwing off a log when deceased was prevented from getting out of its way, held, that the accident was due to the negligence of the fellow servant.—*Nylund v. Duluth & N. W. Ry. Co., Minn., 143 N. W. 739.*

60. —**Industrial Accident Board.**—A finding by the industrial accident board, under the workmen's compensation act, stands on the same footing as the finding of a judge or jury.—*Pigeon v. Employers' Liability Assur. Corporation, Mass., 102 N. E. 922.*

61. —**Promulgating Rules.**—Where a crew of four men were working in plain sight and hearing of each other while unloading logs from flat cars, and the custom of giving warning of the release of the logs was omitted, and plaintiff was injured, though he knew that the men had gone to release them, the master was not negligent in not promulgating a rule that warning be given.—*Corrigan v. New Dells Lumber Co., Wis., 143 N. W. 666.*

62. —**Safe Appliances.**—A rope used in lowering or raising an employe making excava-

tions in a well by the forming of a loop is not within the rule of safe instrumentalities, and the employe, failing to form the loop in a secure way, cannot recover for an injury caused by the failure of the loop to hold.—*Greinert v. Lamont Inv. Co., Wash., 135 Pac. 817.*

63. —**Vice-Principal.**—Where the operator of a coal mine is in control of the entries and by custom certain employes are required to repair the same, if they fail to exercise ordinary care in the performing of such duty, and injury results to another miner, the operator of the mine is liable.—*Carnego v. Crescent Coal Co., Iowa, 143 N. W. 550.*

64. —**Mortgages.**—Building and Loan Association.—Where plaintiff, accepting an application for a building loan, agreed to pay the same for the construction of the building as the work progressed, it was bound to pay the money only for such building, and could not enforce the lien for such part of the proceeds as was paid to the contractor and used by him for other purposes.—*Equitable Savings & Loan Ass'n. v. Hewitt, Ore., 135 Pac. 864.*

65. —**Municipal Corporations.**—Abutting Owners.—An abutting property owner has no right to damages on account of the change in the natural surface of a street to a grade line for the first time established in the course of its normal and ordinary improvement for street purposes.—*Muller v. Great Northern Ry. Co., Wash., 135 Pac. 631.*

66. —**Action Against.**—Where a municipality exercises a power granted to it for its own advantage, and not as a governmental agency, it is liable as an individual or private corporation.—*Blake-McFall Co. v. City of Portland, Ore., 135 Pac. 873.*

67. —**Extending Limits.**—The Legislature has the power to define the limits of cities and towns and it may extend the boundaries whenever public necessity so requires; property and what shall be country property, persons holding their property subject to the legislative power to define what shall be urban.—*Gernert v. City of Louisville, Ky., 159 S. W. 1163.*

68. —**Mob Violence.**—A statute imposing absolute liability on a city for the destruction of property within its limits by mob violence, without regard to negligence, must be strictly construed.—*Wells Fargo & Co. v. Jersey City, U. S. D. C., 207 Fed. 871.*

69. —**Negligence.**—Comparative.—The law does not consider the different degrees of negligence of the parties in determining whether plaintiff was guilty of contributory negligence.—*Healey v. Perkins Mach. Co., Mass., 102 N. E. 944.*

70. —**Concurrent.**—Where two independent causes—one of responsible, the other of irresponsible, origin—unite in producing an injury contributing to plaintiff's damage, in so much that it can be said that the act of the defendant caused the injury, and that the cause of irresponsible origin would not alone have produced the injury, the defendant is liable, and, where the other cause would have produced the same damage had defendant not been negligent, he is not liable.—*Miller v. Northern Pac. Ry. Co., Idaho, 135 Pac. 845.*

71. —**Implied Warranty.**—A manufacturer is liable only to his immediate vendee for breach

of an implied warranty respecting the merchandise manufactured by him, as his liability depends on privity of contracts; but exceptions exist where injury is caused by something noxious or dangerous, or where the manufacturer practices fraud or deceit, or is negligent with respect to the sale or construction of a thing not imminently dangerous.—*Mazetti v. Armour & Co.*, Wash., 135 Pac. 633.

72. **Partition—Remaindermen.**—While remaindermen cannot be compelled to have their interests partitioned until they become entitled to possession, yet an action in partition which recognizes such vested interests of remaindermen is proper.—*Shafer v. Covey*, Kan., 135 Pac. 676.

73. **Payment—Presumption of.**—The presumption of payment from lapse of time, where the debt is one not affected by the statute of limitations, is created, so as to shift the burden of proof as to such payment, at the expiration of the time at which ordinary debts would be barred by the statute.—*Graves v. Stone*, Wash., 135 Pac. 810.

74. **Principal and Agent—Bills and Notes.**—Where an agent takes a note payable to himself, but his principal is the real payee, the latter may sue upon the note, even though it is not formally indorsed to him.—*First Nat. Life Assur. Society of America v. Farquhar*, Wash., 135 Pac. 619.

75. **Subagent.**—A subagent engaged by an agent cannot recover his compensation from the principal unless the agent was authorized to procure a subagent.—*Kinhead v. Hartley*, Iowa, 143 N. W. 591.

76. **Rape—Presumption of Chastity.**—In a prosecution for statutory rape the female is presumably of previous chaste character, and the burden is on the state to prove same only after defendant has introduced evidence to show the contrary.—*Diffey v. State*, Okla., 135 Pac. 942.

77. **Receivers—Counsel Fees.**—Where the attorney of the receiver of an insolvent corporation participated in the entry of fraudulent confessions of judgment, counsel fees cannot be awarded.—*Phillips v. Hudson Film Co.*, 143 N. Y. Supp. 759.

78. **Reformation of Instruments—Omission.**—Where the purchaser agrees to assume a mortgage, but fraudulently induces the vendor to omit any reference thereto from the deed, on the ground that it might affect his credit, the deed may be reformed by inserting the omission.—*Wollan v. McKay*, Idaho, 135 Pac. 832.

79. **Rewards—Officers.**—While ordinarily public officers cannot recover upon contracts for additional pay for the performance of their legal duties, a constable, who, in reliance upon an offer of a reward, did detective work, may recover; such work not being done within the scope of his ordinary duties.—*Hartley v. Inhabitants of Granville*, Mass., 102 N. E. 942.

80. **Sales—Completed Transaction.**—There was no completed sale of goods, so as to vest title in the buyer, where, after the contract for the purchase of several barrels of whisky and a keg of gin was made, the seller took two barrels and a keg from his stock, and ascertained the amount of their contents, and shipped them to the buyer; the price having been left for determination according to the number of gallons in the barrels selected.—*Bondy v. Hardina*, Mass., 102 N. E. 935.

81. **Measure of Damages.**—Upon breach of the seller's representations that a horse sold was sound except as stated, the buyer's measure of damages would be the difference between the value of the horse at the time it was accepted when the sale was made and what it would have been worth had the horse been as warranted.—*Patterson v. Gore*, Mich., 143 N. W. 643.

82. **Recession for Fraud.**—Where a seller of a stock of goods concealed the fact that the business had not been profitable and misrepresented the value of such goods, the buyer may rescind for fraud, even though he had an opportunity to inspect.—*Face v. Hall*, Mich., 143 N. W. 622.

83. **Set-Off and Counterclaim—Definition.**—"Set-off" is defined as a counterclaim or cross-demand, and a "counterclaim" as a species of set-off or recoupment, introduced by the Codes of Civil Procedure in several of the states, of a broad and liberal character.—*Wollan v. McKay*, Idaho, 135 Pac. 832.

84. **Interest.**—One indebted on a liquidated demand, who claims an unliquidated set-off amounting to much less than the debt, is liable for interest upon the amount which he admits to be due.—*Henrylyn Orchards Co. v. F. W. Meneray Crescent Nursery Co.*, Colo., 135 Pac. 980.

85. **Torts—Simulated Competition.**—While men may engage in lawful competition for gain and supremacy in business without being liable for damages, though the competition drive another out of business, they may not engage in mere simulated competition for the sole purpose and with the sole intent of maliciously injuring others engaged in the same business.—*Boggs v. Duncan-Schell Furniture Co.*, Iowa, 143 N. W. 482.

86. **Trusts—Consideration.**—No consideration is necessary for a voluntary express trust without power of revocation.—*Taber v. Bailey*, Cal., 135 Pac. 975.

87. **Parol Evidence.**—It is not necessary that an alleged trust should be based on a written instrument, since it may be proved entirely by parol.—*Berry v. French*, Colo., 135 Pac. 985.

88. **Vagrancy—Defined.**—One who travels about for the purpose of participating in different kinds of gambling is a vagrant, within the meaning of Kirby's Dig. § 2068.—*Davis v. State*, Ark., 159 S. W. 1129.

89. **Vendor and Purchaser—Estoppel.**—A vendor who waives a stipulation that time for the payment of the price in installments is of the essence cannot thereafter insist on a forfeiture for nonpayment without giving notice to the purchaser and an opportunity to comply therewith.—*Gray v. Pelton*, Ore., 135 Pac. 755.

90. **Possession as Notice.**—One purchasing real property is bound to take notice of the claims of one in possession.—*Sanders v. Sutlive Bros. & Co.*, Iowa, 143 N. W. 492.

91. **Rescission.**—Where a check was given for a conveyance of land and the purchaser intended at the time to stop payment thereon and defeat the vendor's rights, the vendor may rescind the contract on the ground of fraud.—*Robbins v. Fitzgerald*, Wash., 135 Pac. 656.

92. **Time of Essence.**—A contract of purchase which stipulates for specified payments on designated dates, and provides that, if the purchaser fails to make any of the payments at the time specified, his rights shall be forfeited, make time of the essence, and a default in a payment called for works a forfeiture.—*Gray v. Pelton*, Ore., 135 Pac. 755.

93. **Waiver.**—No mere indulgences in a delay in making payments can be construed as a waiver of a vendor's contract right to declare a forfeiture of the payments made, where no element of estoppel is involved.—*Long v. Clark*, Kan., 135 Pac. 673.

94. **Waters and Water Courses—Junior Appropriator.**—Junior appropriators have a vested right to the continuance of conditions as they existed on the stream at and subsequent to the time they made their appropriations, including the general method of use of water therefrom.—*Monte Vista Canal Co. v. Centennial Irrigating Ditch Co.*, Colo., 135 Pac. 981.

95. **Riparian Owner.**—Right of riparian proprietor to use the waters of a stream on his riparian land equally with other riparian owners is superior to the rights of mere appropriators, who have not acquired the rights, by prescription or grant from such riparian proprietor to use the water on nonriparian land.—*Watson v. Lawson*, Cal., 135 Pac. 961.

96. **Insurance—Accident.**—In an action on an accident policy, a showing that a deceased was killed in an affray with a burglar will establish the fact of accidental death and entitle the beneficiary to recover, unless death from such cause is exempted by the policy.—*Allen v. Travelers' Protective Ass'n. of America*, Iowa, 143 N. W. 574.